

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6872

BILL NUMBER: SB 298

NOTE PREPARED: Dec 30, 2011

BILL AMENDED:

SUBJECT: Mortgages and Liens on Real Property.

FIRST AUTHOR: Sen. Zakas

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL
DEDICATED
FEDERAL**

IMPACT: No Fiscal Impact

Summary of Legislation: The bill provides that a mortgage or vendor's lien on real estate in Indiana expires 5 years after the due date of the last installment of the secured debt. (Current law provides that a mortgage or lien expires 10 years (or 20 years for a mortgage or lien created before September 1, 1982) after the due date of the last installment of the secured debt.) It provides that if the record of the mortgage or lien does not show the due date of the last installment, the mortgage or lien expires 6 years (instead of 20 years under current law) after the date of execution of the mortgage or lien.

This bill provides that if:

- (1) the record of the mortgage or lien does not show the due date of the last installment; and
- (2) the execution date is omitted from the mortgage or lien; the mortgage or lien expires 6 years (instead of 20 years under current law) after the mortgage or lien is recorded. It makes corresponding changes in the provision that allows the mortgagee or lienholder to file an affidavit stating when the debt becomes due.

For purposes of an action to foreclose a mortgage on an interest in real property in Indiana, it defines an "interested person" as:

- (1) the holder of the evidence of debt secured by the mortgage being foreclosed; or
- (2) a person to whom a sheriff's deed is conveyed as a purchaser of the property at a judicial sale ordered in the action.

The bill defines an "omitted party" as a person who:

- (1) before the foreclosure action acquired in the property a record interest that is junior or subordinate to the mortgage being foreclosed; and
- (2) either is not named as a defendant in the action or not served with process, or is not served with a notice of sale after a judicial sale is ordered in the action. It also provides that at any time after a judgment and

decree of sale is entered in an action to foreclose a mortgage on an interest in real property in Indiana, an interested person or an omitted party may bring a civil action to:

(1) determine the extent of; and

(2) terminate; an omitted party's interest in the property. It provides that upon the filing of such an action, the court shall determine the extent of the omitted party's interest and issue a decree terminating that interest, subject to the right of the omitted party to redeem the property if the omitted party would have had redemption rights under existing law.

The bill sets forth factors that the court must consider in determining the terms of redemption. The bill provides that:

(1) the amount to be paid for redemption may not be less than the sale price resulting from the foreclosure of the senior lien, plus interest; and

(2) the time allowed for payment of the redemption amount may not exceed 90 days from the date of the court's decree.

It provides that:

(1) the senior lien on which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser at the judicial sale until the interest of any omitted party has been terminated through an action authorized under the new provisions or by operation of law; and

(2) until an omitted party's interest is terminated, the purchaser at the judicial sale is the equitable owner of the senior lien and has all rights against an omitted party as existed before the sale. The bill provides that an interested person's rights under the new provisions may not be denied because of certain acts or omissions by the interested person. It also makes technical changes.

Effective Date: Upon passage; July 1, 2012.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected:

Information Sources:

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